

CONDOMINIUM PUBLIC REPORT

Prepared & Issued by: Edward R. Fischer, Trustee of the Edward R. Fischer  
Developer Revocable Living Trust Dated Oct. 16, 1990  
Address 73-1247 Hiolani Street, Kailua-Kona, HI 96740

Project Name(\*): HIOLANI ARMS  
Address: 73-1247 Hiolani Street, Kailua-Kona, HI 96740

Registration No. 3906 Effective date: April 24, 1998  
(Conversion) Expiration date: May 24, 1999

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

**PRELIMINARY:** (yellow) The developer may not as yet have created a condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.

**FINAL:** (white) The developer has legally created a condominium and has filed complete information with the Commission.  
[ X ] No prior reports have been issued.  
[ ] This report supersedes all prior public reports.  
[ ] This report must be read together with \_\_\_\_\_

**SUPPLEMENTARY:** (pink) This report updates information contained in the:  
[ ] Preliminary Public Report dated: \_\_\_\_\_  
[ ] Final Public Report dated: \_\_\_\_\_  
[ ] Supplementary Public Report dated: \_\_\_\_\_

And [ ] Supersedes all prior public reports  
[ ] Must be read together with \_\_\_\_\_  
[ ] This report reactivates the \_\_\_\_\_  
public report(s) which expired on \_\_\_\_\_

(\*) Exactly as named in the Declaration

**Disclosure Abstract:** Separate Disclosure Abstract on this condominium project:

- Required and attached to this report                       Not Required - disclosures covered in this report.

**Summary of Changes from Earlier Public Report**

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

- No prior reports have been issued by the developer.

- Changes made are as follows:

<b>SPECIAL ATTENTION</b>
<p>This is a Condominium Project, <b>not</b> a subdivision. The land area beneath and immediately appurtenant to each unit is designated as a LIMITED COMMON AREA and is NOT a legally subdivided lot. The dotted lines on the Condominium Map bounding the designated number of square feet in each limited common element land area are for illustrative purposes only and should not be construed to be the property lines of legally subdivided lots.</p> <p>This Public Report does not constitute approval of the Project by the Real Estate Commission, or any other governmental agency, nor does it ensure that all applicable County codes, ordinances, and subdivision requirements have necessarily been complied with.</p> <p>THE PROSPECTIVE PURCHASER IS CAUTIONED TO CAREFULLY REVIEW THE CONDOMINIUM DOCUMENTS REFERENCED IN THIS PUBLIC REPORT FOR FURTHER INFORMATION WITH REGARD TO THE FOREGOING</p>

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## **General Information On Condominiums**

A condominium is a special form of real property. To create a condominium in Hawaii, the requirements of the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, must be complied with. In addition, certain requirements and approvals of the County in which the project is located must be satisfied and obtained.

Some condominium projects are leasehold. This means that the land or the building(s) and other improvements are leased to the buyer. The lease for the land usually requires that at the end of the lease term, the lessees (apartment owners/tenants) deliver their interest in the land to the lessor (fee property owner). The lease also usually requires that the lessees either (1) convey to the lessor the building(s) and other improvements, including any improvements paid for by the lessees; or (2) remove or dispose of the improvements at the lessee's expense. Leases for individual apartments often require that at the end of the lease term, the lessee deliver to the lessor the apartment, including any improvements placed in the apartment by the lessee.

If you are a typical condominium apartment owner, you will have two kinds of ownership: (1) ownership in your individual apartment; and (2) an undivided interest in the common elements.

"Common elements" are the areas of the condominium project other than the individual apartments. They are owned jointly by all apartment owners and include the land, either in fee simple or leasehold, and those parts of the building or buildings intended for common use such as foundations, columns, roofs, halls, elevators, and the like. Your undivided interest in the common elements cannot be separated from ownership of your apartment.

In some condominium projects, some common elements are reserved for the exclusive use of the owners of certain apartments. These common elements are called "limited common elements" and may include parking stalls, patios, lanais, trash chutes, and the like.

You will be entitled to exclusive ownership and possession of your apartment. Condominium apartments may be individually bought, sold, rented, mortgaged or encumbered, and may be disposed of by will, gift, or operation of law.

Your apartment will, however, be part of the group of apartments that comprise the condominium project. Study the project's Declaration, Bylaws, and House Rules. These documents contain important information on the use and occupancy of apartments and the common elements as well as the rules of conduct for owners, tenants, and guests.

## **Operation of the Condominium Project**

The Association of Apartment Owners is the entity through which apartment owners may take action with regard to the administration, management, and operation of the condominium project. Each apartment owner is automatically a member of the Association.

The Board of Directors is the governing body of the Association. Unless you serve as a board member or an officer, or are on a committee appointed by the board, your participation in the administration and operation of the condominium project will in most cases be limited to your right to vote as an apartment owner. The Board of Directors and officers can take certain actions without the vote of the owners. For example, the board may hire and fire employees, increase or decrease maintenance fees, borrow money for repair and improvements and set a budget. Some of these actions may significantly impact the apartment owners.

Until there is a sufficient number of purchasers of apartments to elect a majority of the Board of Directors, it is likely that the developer will effectively control the affairs of the Association. It is frequently necessary for the developer to do so during the early stages of development and the developer may reserve certain special rights to do so in the Declaration and Bylaws. Prospective buyers should understand that it is important to all apartment owners that the transition of control from the developer to the apartment owners be accomplished in an orderly manner and in a spirit of cooperation.

I. PERSONS CONNECTED WITH THE PROJECT

Developer: Edward R. Fischer, Trustee of the Edward R. Fischer  
Revocable Living Trust Dated Oct 16, 1990 Phone: (808) 325-5154  
Name (Business)  
73-1247 Hiolani Street  
Business Address  
Kailua-Kona, HI 96740

Names of officers or general partners of developers who are corporations or partnerships:

N/A

Real Estate Broker: For Sale By Owner Phone: (Business)  
Name  
Business Address

Escrow: Title Guaranty and Escrow Services, Inc. Phone: (808) 329-6666  
Name (Business)  
75-170 Hualalai Road, Suite C310  
Business Address  
Kailua-Kona, Hawaii 96740

General Contractor: N/A Phone: (Business)  
Name  
Business Address

Condominium Managing Agent: Self-Managed by the Association of Apartment owners Phone: (Business)  
Name  
Business Address

Attorney for Developer: Colin L. Love Phone: (808) 329-2460  
Name (Business)  
Post Office Box 2072  
Business Address  
Kailua-Kona, Hawaii 96745

II. CREATION OF THE CONDOMINIUM;  
CONDOMINIUM DOCUMENTS

A condominium is created by recording in the Bureau of Conveyances and/or filing with the Land Court a Declaration of Condominium Property Regime, a Condominium Map (File Plan), and the Bylaws of the Association of Apartment Owners. The Condominium Property Act (Chapter 514A, HRS), the Declaration, Bylaws, and House Rules control the rights and obligations of the apartment owners with respect to the project and the common elements, to each other, and to their respective apartments. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law.

- A. **Declaration of Condominium Property Regime** contains a description of the land, buildings, apartments, common elements, limited common elements, common interests and other information relating to the condominium project.

The Declaration for this condominium is:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 97-177974  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Declaration referred to above has been amended by the following instrument [state name of document, date and recording/filing information]:

- B. **Condominium Map (File Plan)** shows the floor plan, elevation and layout of the condominium project. It also shows the floor plan, location, apartment numbers, and dimensions of each apartment.

The Condominium Map for this condominium project is:

- Proposed  
 Recorded - Bureau of Conveyances Condo Map No. 2636  
 Filed - Land Court Condo Map No. \_\_\_\_\_

The Condominium Map has been amended by the following instrument [state name of document, date and recording/filing information]:

- C. **Bylaws of the Association of Apartment Owners** govern the operation of the condominium project. They provide for the manner in which the Board of Directors of the Association of Apartment Owners is elected, the powers and duties of the Board, the manner in which meetings will be conducted, whether pets are prohibited or allowed and other matters which affect how the condominium project will be governed.

The Bylaws for this condominium are:

- Proposed  
 Recorded - Bureau of Conveyances: Document No. 97-177975  
Book \_\_\_\_\_ Page \_\_\_\_\_  
 Filed - Land Court: Document No. \_\_\_\_\_

The Bylaws referred to above have been amended by the following instruments [state name of document, date and recording/filing information]:

D. **House Rules.** The Board of Directors may adopt House Rules to govern the use and operation of the common elements and limited common elements. House Rules may cover matters such as parking regulations, hours of operation for common facilities such as recreation areas, use of lanais and requirements for keeping pets. These rules must be followed by owners, tenants, and guests. They do not need to be recorded or filed to be effective. The initial House Rules are usually adopted by the developer.

The House Rules for this condominium are:

Proposed             Adopted             Developer does not plan to adopt House Rules

E. **Changes to Condominium Documents:**

Changes to the Declaration, Condominium Map, and Bylaws are effective only if they are duly adopted and recorded and/or filed. Changes to House Rules do not need to be recorded or filed to be effective.

1. **Apartment Owners:** Minimum percentage of common interest which must vote for or give written consent to changes:

	<u>Minimum Set by Law</u>	<u>This Condominium</u>
Declaration (and Condo Map)	75%	_____100%_____
Bylaws	65%	_____100%_____
House Rules	---	_____N/A_____

\* The percentages for individual condominiums may be more than the minimum set by law for projects with five or fewer apartments.

2. **Developer:**

No rights have been reserved by the developer to change the Declaration, Condominium Map, Bylaws or House Rules.

Developer has reserved the following rights to change the Declaration, Condominium Map, Bylaws or House Rules:

During the sales period, the Developer has reserved the right to make changes to the project documents and the project as may be required by law, a title insurance company, an institutional lender or any governmental agency; prior to the conveyance or transfers of the first apartment, for any reason and in any manner, as the developer deems necessary under the circumstances, provided that no such change shall substantially alter or reduce the usable space within the Buyer's Apartment, render unenforceable the Buyer's mortgage commitment, increase the Buyer's share of common expenses, or reduce the obligations of the Developer for common expense on unsold apartments.

III. THE CONDOMINIUM PROJECT

A. **Interest to be Conveyed to Buyer:**

- Fee Simple:** Individual apartments and common elements, which include underlying land, will be in fee simple.
- Leasehold or Subleasehold:** Individual apartments and the common elements, which include the underlying land will be leasehold.

**Leases for the individual apartments and the underlying land usually require that at the end of the lease term, the lessee (apartment owner/tenant) deliver to the lessor (fee property owner) possession of the leased premises and all improvements, including improvements paid for by the lessee.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provision(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s) \_\_\_\_\_

Lease Rent Payable:      Monthly                    Quarterly  
                                  Semi-Annually        Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  Month  Year

**For Sub-leaseholds:**

- Buyer's sublease may be canceled if the master lease between sublessor and fee owner is:  
 Canceled                    Foreclosed
- As long as the buyer is not in default, the buyer may continue to occupy the apartment and/or land on the same terms contained in the sublease even if the master lease is canceled or foreclosed.

- Individual Apartments in Fee Simple: Common Interest in the Underlying Land in Leasehold or Sub-leasehold:**

**Leases for the underlying land usually require that at the end of the lease term, the lessees (apartment owners/tenants) deliver the lessor (fee property owner) their interest in the land and that they either (1) remove or dispose of the building(s) and other improvements at the lessee's expense; or (2) convey the building(s) and improvements to the lessor, often at a specified price.**

Exhibit \_\_\_\_\_ contains further explanations regarding the manner in which the renegotiated lease rents will be calculated and a description of the surrender clause provisions(s).

Lease Term Expires: \_\_\_\_\_ Rent Renegotiation Date(s): \_\_\_\_\_

Lease Rent Payable:                    Monthly                    Quarterly  
    Semi-Annually        Annually

Exhibit \_\_\_\_\_ contains a schedule of the lease rent for each apartment per  Month  Year

Other:

**IMPORTANT INFORMATION ON LEASEHOLD CONDOMINIUM PROJECTS**

The information contained in this report is a summary of the terms of the lease. For more detailed information, you should secure a copy of the lease documents and read them thoroughly.

If you have any legal questions about leasehold property, the lease documents or the terms of the lease and the consequences of becoming a lessee, you should seek the advice of an attorney

There are currently no statutory provisions for the mandatory conversion of leasehold condominiums and there are no assurances that such measures will be enacted in the future.

In leasehold condominium projects, the buyer of an apartment will acquire the right to occupy and use the apartment for the time stated in the lease agreement. The buyer will not acquire outright or absolute fee simple ownership of the land. The land is owned by the lessor or the leased fee owner. The apartment owner or lessee must make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed at specific amounts for fixed periods of time, and are then subject to renegotiation. Renegotiation may be based on a formula, by arbitration set in the lease agreement by law or by agreement between the lessor and lessee. The renegotiated lease rents may increase significantly. At the end of the lease, the apartment owners may have to surrender the apartments, the improvements and the land back to the lessor without any compensation (surrender clause).

When leasehold property is sold, title is normally conveyed by means of an assignment of lease, the purpose of which is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease, not the property itself.

The developer of this condominium project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer may have then entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

**B. Underlying Land:**

Address: 73-1247 Hiolani Street Tax Map Key: (TMK) (3rd) 7-03-046-018  
Kailua-Kona, Hi 96740

Address  TMK is expected to change because N/A

Land Area: 43,561  square feet  acre(s) Zoning: A-1A





7. Parking Stalls:

Total Parking Stalls: 8

	<u>Regular</u>		<u>Compact</u>		<u>Tandem</u>		<u>TOTAL</u>
	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	<u>Covered</u>	<u>Open</u>	
Assigned: Apt. "A"	<u>3</u>	<u>3</u>	_____	_____	_____	_____	<u>6</u>
Apt "B"	<u>1</u>	<u>1</u>	_____	_____	_____	_____	<u>2</u>
Guest:	_____	_____	_____	_____	_____	_____	_____
Unassigned:	_____	_____	_____	_____	_____	_____	_____
Extra for Purchase	_____	_____	_____	_____	_____	_____	_____
Other:	_____	_____	_____	_____	_____	_____	_____
Total Covered & Open	<u>8</u>		<u>0</u>		<u>0</u>		<u>8</u>

Each apartment will have the exclusive use of at least 2 parking stall(s).  
Buyers are encouraged to find out which stall(s) will be available for their use.

Commercial parking garage permitted in condominium project.

Exhibit "B" contains additional information on parking stalls for this condominium project.

8. Recreational and Other Common Facilities:

There are no recreational or common facilities.

Swimming pool       Storage Area       Recreation Area

Laundry Area       Tennis Courts       Trash Chutes

Other: \_\_\_\_\_

9. Compliance With Building Code and Municipal Regulations, Cost to Cure Violations:

There are no violations.

Violations will not be cured.

Violations and costs to cure are listed below.

Violations will be cured by \_\_\_\_\_  
(Date)

10. Condition and Expected Useful Life of Structural Components, Mechanical, and Electrical Installations

(For conversions of residential apartments in existence for at least five years):

Structural components and the mechanical and electrical installations of that portion of Building "A" that was completed more than five (5) years ago are in satisfactory condition considering their age. The Developer makes no representations regarding the useful life of any of the structural components, mechanical or electrical installations.

11. Conformance to Present Zoning Code:

a.  No variances to zoning code have been granted.

Variance(s) to zoning code was/were granted as follows:

b. Conforming/Non-Conforming Uses, Structures, Lot

In general, a non-conforming use, structure, or lot is a use, structure, or lot which was lawful at one time but which does not now conform to present zoning requirements.

	<u>Conforming</u>	<u>Non-Conforming</u>	<u>Illegal</u>
Uses	<u>  X  </u>	<u>          </u>	<u>          </u>
Structures	<u>  X  </u>	<u>          </u>	<u>          </u>
Lot	<u>  X  </u>	<u>          </u>	<u>          </u>

If a variance has been granted or if uses, improvements or lot are either non-conforming or illegal, buyer should consult with county zoning authorities as to possible limitations which may apply.

Limitations may include restrictions on extending, enlarging, or continuing the non-conformity, and restrictions on altering and repairing structures. In some cases, a non-conforming structure that is destroyed or damaged cannot be reconstructed.

The buyer may not be able to obtain financing or insurance if the condominium project has a non-conforming or illegal use, structure or lot.

D. Common Elements, Limited Common Elements, Common Interest:

1. Common Elements: Common Elements are those parts of the condominium project other than the individual apartments. Although the common elements are owned jointly by all apartment owners, those portions of the common elements which are designated as limited common elements (see paragraph 2 below) may be used only by those apartments to which they are assigned. The common elements for this project, as described in the Declaration are:

described in Exhibit   C  

as follows:

2. Limited Common Elements: Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

There are no limited common elements in this project:

The limited common elements and the apartments which use them, as described in the Declaration, are:

described in Exhibit C.

as follows:

3. Common Interest: Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration are:

described in Exhibit \_\_\_\_\_

as follows:

Apartment "A" : Fifty Percent (50%)

Apartment "B" : Fifty Percent (50%)

Each apartment has an equal undivided fractional interest in all of the common elements. The common interests are equal and not related to or determined by the size of the apartments.

E. Encumbrances Against Title: An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit "D" describes the encumbrances against the title contained in the title report dated February 5, 1998

and issued by Title Guaranty Escrow Service, Inc.

Blanket Liens:

A blanket lien is an encumbrance (such as a mortgage) on the entire condominium project that secures some type of monetary debt (such as a loan) or other obligation. A blanket lien is usually released on an apartment-by-apartment basis upon payment of specified sums so that individual apartments can be conveyed to buyers free and clear of the lien.

[X] There are no blanket liens affecting title to the individual apartments.

[ ] There are blanket liens which may affect title to the individual apartments.

Blanket liens (except for improvement district or utility assessments) must be released before the developer conveys the apartment to a buyer. The buyer's interest will be affected if the developer defaults and the lien is foreclosed prior to conveying the apartment to buyer.

<u>Type of Lien</u>	<u>Effect on Buyer's Interest and Deposit if Developer Defaults or Lien is Foreclosed <b>Prior to Conversion</b></u>
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F. Construction Warranties:

Warranties for individual apartments and the common elements, including the beginning and ending dates for each warranty, are as follows:

1. Building and Other Improvements:

The Owner/Developer makes no warranties itself and the Owner/Developer is not aware of any warranties from any general contractor, subcontractor or materials supplier that are in existence. The Owner/Developer will assign to the purchasers apartments such warranties as may exist, if any, and the Owner/Developer will cooperate with each apartment owner during the effective period of any warranty, if any, in asserting any claims.

2. Appliances:

None

G. **Status of Construction and Estimated Completion Date:**

All construction on both apartments has been completed.

The original structure for Apartment "A" was completed in 1987, and the last addition was completed in 1993. Apartment "B" was completed in 1993.

H. **Project Phase:**

The developer  has  has not reserved the right to add to, merge, or phase this condominium.

Summary of Developer's plans or rights to perform for future development (such as additions, mergers or phasing):



V. MISCELLANEOUS

A **Sales Documents Filed With the Real Estate Commission:**

Sales documents on file with the Real Estate Commission include but are not limited to:

- Notice to Owner Occupants
- Specimen Sales Contract  
Exhibit \_\_\_\_\_ "F" contains a summary of the pertinent provisions of the sales contract.
- Escrow Agreement dated August 20, 1997  
Exhibit \_\_\_\_\_ "G" contains a summary of the pertinent provisions of the escrow agreement.
- Other Specimen Deed\_\_\_\_\_

B. **Buyer's Right to Cancel Sales Contract:**

1. **Rights Under the Condominium Property Act (Chapter 514A, HRS):**

**Preliminary Report:** Sales made by the developer are not binding on the prospective buyer. Sales made by the developer may be binding on the developer unless the developer clearly states in the sales contract that sales are not binding. A prospective buyer who cancels the sales contract is entitled to a refund of all moneys paid, less any escrow cancellation fee up to \$250.00.

**Supplementary Report to a Preliminary Report:** Same as for Preliminary Report.

**Final Report or Supplementary Report to a Final Report:** Sales made by the developer are binding if:

- A) The Developer delivers to the buyer a copy of:
  - 1) Either the Final Public Report **OR** Supplementary Public Report which has superseded the Final Public Report for which an effective date has been issued by the Real Estate Commission, **AND**
  - 2) Any other public report issued by the developer prior to the date of delivery, if the report was not previously delivered to the buyer and if the report has not been superseded;
- B) The buyer is given an opportunity to read the report(s), **AND**
- C) One of the following has occurred :
  - 1) The buyer has signed a receipt for the report(s) and waived the right to cancel; or
  - 2) Thirty (30) days have passed from the time the report(s) were delivered to the buyer; or
  - 3) The apartment is conveyed to the buyer within 30 days from the date the report(s) were delivered to the buyer.

**Material Changes** Binding contracts with the Developer may be rescinded by the buyer if:

- A) There is a material change in the project which directly, substantially, and adversely affects (1) the use or value of the buyer's apartment or its limited common elements; or (2) the amenities available for buyer's use; **AND**
- B) The buyer has not waived the right to rescind.

If the buyer rescinds a binding sales contract because there has been a material change, the buyer is entitled to a full and prompt refund of any moneys the buyer paid.

2 Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:

- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission
- B) Declaration of Condominium Property Regime.
- C) Bylaws of the Association of Apartment Owners.
- D) House Rules.
- E) Condominium Map.
- F) Escrow Agreement.
- G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
- H) Other Declaration of Covenants, Conditions and Restrictions for Kona Acres Subdivision

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer and are on file at the Department of Commerce and Consumer Affairs. Reprints of Hawaii's Condominium Property Act (Chapter 514A, HRS) and Hawaii Administrative Rules, Chapter 16-107, are available at the Cashier's Office, Department of Commerce Consumer Affairs, 1010 Richards Street, 3rd Floor, Honolulu, Hawaii, mailing address: P. O. Box 541, Honolulu, HI 96809, at a nominal cost.

This Public Report is a part of Registration No. 3906 filed with the Real Estate Commission on February 17, 1998.

Reproduction of Report. When reproduced, this report must be on:

YELLOW paper stock                       WHITE paper stock                       PINK paper stock

**C. Additional Information Not Covered Above**

The property is zoned for agriculture. The apartments may be used for residential purposes, but only in support of or in conjunction with an agricultural use of the property. The apartments may not be used for any trade or business that is not related to an agricultural use of the property.

**Residential Dwellings within State Land Use Agricultural District**

Purchasers should be aware that the State Land Use Commission issued a Declaratory Ruling in December, 1994, regarding the construction of residential dwellings on properties located within the State Land Use Agricultural District. In response to said ruling, the Hawaii County Planning Department is requiring applicants for building permits on such lands to acknowledge receipt of a "Farm Dwelling Notice". This Farm Dwelling Notice reads as follows:

**FARM DWELLING NOTICE**

*To: Applicants for Building Permits on Land in State Land Use Agricultural District.*

*This is to inform you that Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as permissible use in an agricultural use district, unless the dwelling is related to an agricultural activity or is a "farm dwelling".*

*Farm Dwelling is defined in Chapter 205-4.5(a)(4) as "single family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling. "*

*Penalty for violation of Section 205-4.5, Hawaii Revised Statutes, is a fine of not more than \$5,000. If any person who is cited for a violation of the law fails to remove the violation within six months of such citation and the violation continues, such person is subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.*

*and have been given a copy*

*I acknowledge that I have read the above*

\_\_\_\_\_  
*Signature of Applicant*

\_\_\_\_\_  
*Signature of Witness*

**Disclosure re: Selection of Real Estate Broker**

This public report shall not bind a purchaser to the sale of any apartment until (1) the Developers first submit to the Real Estate Commission a duly executed disclosure abstract identifying the designated sales agent, and a duly executed copy of a broker listing agreement with a Hawaii-licensed real estate broker, and (2) gives a copy of said disclosure abstract to the purchaser together with a copy of the Public Report.

If the Developer(s), as the owners, choose to represent themselves in the sale of an apartment, said abstract need not be given to the purchaser, as all necessary disclosure are covered in this report.

D. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

Edward R. Fischer, Trustee of the Edward R. Fischer Revocable Living Trust Dated October 16, 1990

Printed Name of Developer

By: Edward R. Fischer  
Duly Authorized Signatory

Feb 12, 1998  
Date

Edward R. Fischer, Trustee of the Edward R. Fischer Revocable Living Trust Dated October 16, 1990

Print Name & Title of Person Signing Above

Distribution:

Department of Finance, County of Hawaii

Planning Department, County of Hawaii

**EXHIBIT "A"**  
**DESCRIPTION OF BUILDINGS, APARTMENTS**

There are two (2) Buildings.

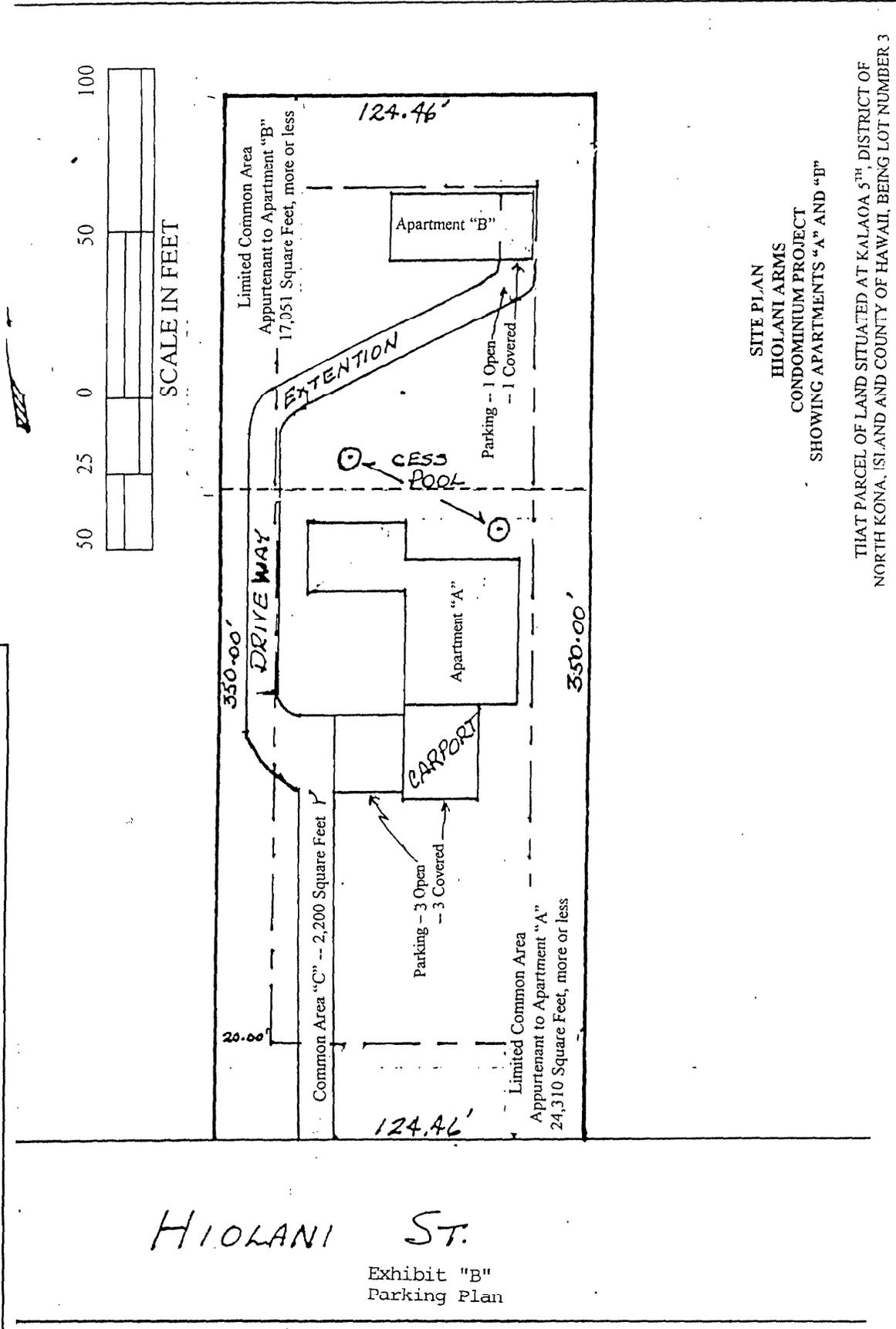
<b>Description of Buildings</b>	<b>Building "A"</b>	<b>Building "B"</b>
Number of stories	2	1
Number of basements	0	0
Number of apartments	1	1
Approximate age of building	4 years*	4 years
Principal materials of construction	wood	wood

<b>Description of Apartments</b>	<b>Apartment "A"</b>	<b>Apartment "B"</b>
Apartment number	A	B
Location of apartment	Building "A"	Building "B"
Living area of apartment (Approx.)	2130 sq. ft.	864 sq. ft.
Number of bedrooms	3	1
Number of bathrooms	4	1
Number of lanais or patios	6 lanai	1
Area of lanais or patios	1096 sq. ft.	136 sq. ft.
Description of rooms in the apartment	3-bedrooms, 4-bath, 1-kitchen, 1-dining room, 1-living room, 1-den and a garage	1-bedroom, 1-bath, 1-dining room, 1 living room, 1-kitchen, and one TV room.
Immediate common element to which the apartment has access	The Limited Common elements surrounding the apartment and Common Element "C" shown on the Condominium Plan.	The Limited Common elements surrounding the apartment and Common Element "C" shown on the Condominium Plan.
Number of parking stalls that are part of the Limited Common Area for each apartment	6	2
Percentage of undivided interest in Common Elements	50%	50%
Other data necessary for proper identification of the apartment	This apartment is at the front of the parcel	This apartment is at the back of the parcel, and is the ohana home

\* the original structure was completed in 1983 and the last of two additions was completed in 1993

Net living area of enclosed portions of apartments are measured from interior surfaces of apartment perimeter walls. Lanai or patio areas considered as part of the apartment are computed and reported separately from the apartment area.

**NOTE: FLOOR AREAS ARE APPROXIMATELY ONLY. THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE FLOOR AREA OF ANY PARTICULAR APARTMENT, LANAI OR PATIO.**



SITE PLAN  
 HIOLANI ARMS  
 CONDOMINIUM PROJECT  
 SHOWING APARTMENTS "A" AND "B"

THAT PARCEL OF LAND SITUATED AT KALAOA 5<sup>TH</sup>, DISTRICT OF NORTH KONA, ISLAND AND COUNTY OF HAWAII, BEING LOT NUMBER 3

HIOLANI ST.

Exhibit "B"  
 Parking Plan

**EXHIBIT "C"**  
**DESCRIPTION OF COMMON ELEMENTS**  
**AND**  
**LIMITED COMMON ELEMENTS**

All of the property is Fee Simple.

In the various documents relating to this project, the term "Common Element" means the same thing as the term "Common Area", and the term "Limited Common Element" means the same thing as "Limited Common Area".

Common Elements are those portions of the condominium project other than the individual apartments. Common Elements are owned jointly by all apartment owners. The owners of each apartment own an undivided one-half (1/2) interest (undivided 50% interest) in all of the Common Elements for all purposes, including voting. This means that the ownership **does not** depend on the size of an apartment or the use to which an apartment is put. The Common Elements include the land upon which the project is located, in fee simple, and all other portions of the project, other than the Apartments, including, specifically, but not limited to, the Common Elements mentioned in the Act that are actually constructed on the land, and all other portions of the Project necessary or convenient to its existence, maintenance and safety or normally in common use and which are not included as part of an apartment, including but not limited to following:

- (a) The land in fee simple;
- (b) All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities and installations over, under and across the project, if any, which serve more than one (1) apartment for services such as power, light, water, gas, sewer, telephone and radio and television signal distribution, if any.
- (c) The roof and all load bearing perimeter walls that serve more than one apartment, if any;
- (d) Any and all other elements and facilities rationally in common use or necessary to the existence, upkeep and safety of the Project.
- (e) The common elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided in the Condominium Property Act.
- (f) Any such partition or division shall be subject to the prior consent thereto by the holder(s) of all mortgage(s) of any condominium Apartment(s) which are filed of record.
- (g) All the rights, benefits and privileges, if any, inuring to the land or to the Condominium from all easements shown on the File Plan or listed in Exhibit "A", or acquired subsequent to the creation of those documents.
- (h) Any and all other portions of the land and improvements that are not specifically designated for use by one or more specific Apartments, but which are intended for common use, including any directory facilities that may be established, and all other apparatus and installations the use of which exists for, is rationally allocated to or is necessary to the existence, upkeep and safety of more than one Apartment of the Condominium Project or which may otherwise be of common use.

(i) Common Element "C" shown on the Condominium File. It serves as a driveway for both apartments and contains approximately 2,200 square feet of land.

Unless clearly repugnant to the context thereof, the term "Common Elements" also means and includes the limited common elements hereinafter described.

Limited Common Elements are those portions of the Common Elements which are reserved for the exclusive use of the owners of certain apartments. They are often referred to as Limited Common Area.

Limited Common Elements for Apartment "A". The Limited Common Elements for Apartment A are the approximately 24,310 square feet of land appurtenant to Apartment "A". The land appurtenant to Apartment "A" is indicated by a dashed line on the Condominium File Plan. The dashed line, metes and bounds, courses and distances, and statement of a land area on Condominium File Plan **do not** indicate that the land has been subdivided. They only define the Limited Common Area for Apartment "A".

Limited Common Elements for Apartment "B". The Limited Common Elements for Apartment "B" are the approximately 17,051 square feet appurtenant to Apartment "B". The dashed line, metes and bounds, courses and distances, and statement of a land area on the Condominium File Plan **do not** indicate that the land has been subdivided. They only define the Limited Common Area for Apartment "B".

Each apartment has an equal undivided one-half (1/2) interest (undivided 50% interest) in all of the common elements for all purposes, including voting.



DATED : August 18, 1997  
RECORDED : Document No. 97-177975

7. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the Revocable Living Trust of Edward Fischer dated October 16, 1990.

END EXHIBIT "D"

**EXHIBIT "E"**

**ESTIMATE OF INITIAL MAINTENANCE FEES  
AND  
ESTIMATE OF MAINTENANCE FEE DISBURSEMENTS**

Estimate of Initial Maintenance Fees

<u>Apartment</u>	<u>Monthly Fee x 12 months =</u>	<u>Yearly Total</u>
A	\$00.00	\$00.00
B	\$00.00	\$00.00

Note – no monthly maintenance fees have been estimated for this project because the only Common Area is a Portland Cement driveway which requires no maintenance.

The Real Estate Commission has not reviewed the estimates of maintenance fee assessments and disbursements for their accuracy or sufficiency

**EXHIBIT "E" (Cont.)**

**Estimate of Monthly Fee Disbursements**

<b>Utilities and Service</b>	<b><u>Monthly Fee x 12 months = Yearly Total</u></b>	
Air Conditioning (Service)	0	0
Electricity	0	0
<input type="checkbox"/> common elements only	0	0
<input type="checkbox"/> common element and apartments	0	0
Elevator	0	0
Gas	0	0
Refuse Collection	0	0
Telephone	0	0
Water and Sewer	0	0
 Maintenance, Repairs and Supplies		
Building	0	0
Grounds	0	0
 Management		
Management Fee (bookkeeping)		
Payroll and Payroll Taxes		
Off		
Insurance Reserve (*)		
Taxes and C		
Audit Fees		
Other		
 TOTAL		

Developer discloses that no reserve study was done in accordance with Section 514A-83.6 HRS and replacement reserve rules, Subchapter 6 Title 16, Chapter 107 Hawaii Administrative Rules as amended.

I, Edward R. Fischer, as agent for/and/or employed by \_\_\_\_\_, the condominium managing agent/developer for the HIOLANI ARMS condominium project hereby certify that the above estimate of initial maintenance fee assessment and maintenance fee disbursements were prepared in accordance with generally accepted accounting principles

Edward R. Fischer  
Signature

12/13/97  
Date

(\*)Mandatory reserve assessment and collection in effect beginning 1994 budget year. The Developer is to attach to this exhibit an explanation whether, in arriving at the figure for "Reserve", the Developer has conducted a reserve study in accordance with §514A-83.6, HRS, and the replacement reserve rules, Subchapter 6, Title 16, Chapter 107, Hawaii Administrative Rules, as amended.

Pursuant to §514-A-83.6, HRS, a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first meeting  
End Exhibit "E"

**EXHIBIT "F"**

**SUMMARY OF DEPOSIT RECEIPT AND SALES CONTRACT**

The Deposit, Receipt and Sales Contract contains the price and other terms and conditions under which a Purchaser will agree to buy an apartment in the project. Among other things, the Deposit, Receipt and Sales Contract states:

1. The total purchase price, method of payment and additional sums which must be paid in connection with the purchase of an apartment.
2. That the Purchaser acknowledges having received and read a final public report for the Project prior to signing the Deposit, Receipt and Sales Contract.
3. That the Developer makes no representations concerning rental of an apartment, income or profit from an apartment, or any other economic benefits to be derived from the purchase of an apartment.
4. That the Purchaser's money will be held in escrow, under the terms of the Escrow Agreement. The Purchaser's money can only be disbursed by escrow if the sale is canceled by the Purchaser, if the sale closes according to the terms of the Deposit, Receipt and Sales Contract, if the Purchaser is in default, if the Purchaser dies or is dissolved, or if the Seller and the Purchaser agree otherwise in writing.
5. The Purchaser has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to \$250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.
6. If the Purchaser does not cancel the Deposit, Receipt and Sales Contract as provided in Paragraph 5, and more than thirty days have passed since the delivery of the Public Report to the Purchaser then the Deposit, Receipt and Sales Contract is binding on the Purchaser. If the Purchaser fails purchase the apartment after the Deposit, Receipt and Sales Contract becomes binding upon the Purchaser then the Purchaser will be in default. If the Purchaser is in default then the Seller will be entitled to cancel the Deposit, Receipt and Sales Contract and retain all money paid by Purchaser up to 20% of the sales price as liquidated damages.
7. If the Purchaser dies prior to closing, or in the case of a corporation or partnership, dissolves prior to closing, the Seller may return the Purchaser's payments, without interest and less Escrow cancellation fees and all costs incurred by the Seller, Escrow, or any lending institution in processing this Deposit, Receipt and Sales Contract or by loan application, and this Deposit, Receipt and Sales Contract will be deemed to have been canceled and both the Seller and the Purchaser (including the Purchaser's estate and legal representatives) shall be released from all obligations and liability under that agreement.
8. Requirements relating to the Purchaser's financing of the purchase of an apartment.
  - a. The Purchaser's offer is **not** contingent on the Purchaser obtaining financing or on the Purchaser's ability to pay.
  - b. In the event the Purchaser wishes to finance the purchase of the Apartment, the Purchaser is required to apply for financing within ten business days from the date the agreement to purchase becomes a binding contract. The Purchaser is required to use his best efforts to obtain

the mortgage loan in good faith; to execute and deliver all necessary documents and disclose all information; to pay any and all costs, charges and expenses in connection with the mortgage loan; to otherwise promptly and diligently comply with all requests of the mortgagee and/or the Seller to apply for, obtain and close the mortgage loan; and, where deemed necessary by the Seller, to make further applications for a mortgage loan.

c. The Purchaser may be required to pay a loan fee in order to get a loan.

d. The Seller has no obligation to arrange for the Purchaser's mortgage or other financing.

9. That the apartment and the Project will be subject to various legal documents which Purchaser should examine, and that the Developer may change these documents under certain conditions.

10. That the Developer makes no warranties regarding the apartment, the Project or anything installed or contained in the apartment or the Project.

11. That the Purchaser must close the purchase at a certain date and pay closing costs, in addition to the purchase price. The closing date will be set by the Seller, but it will not be sooner than sixty (60) days after the Deposit, Receipt and Sales Contract becomes binding.

12. On closing the Purchaser will be responsible for the payment of certain costs in addition to the purchase price. Typical closing costs for the Purchaser and the Seller include:

<b>Item</b>	<b>Seller</b>	<b>Purchaser</b>
Escrow fees	\$212.50	\$212.50
Recording		\$20 per document
Lien Check	\$20	\$20
Real Property Tax Check	\$2.00	
Documents	\$104 for a deed	\$135 for a purchase money mortgage
Hurricane Insurance Fund		.001 x the amount of any mortgage
Real Property Taxes & assessments	Prorated	Prorated
Conveyance tax	.001 x sale price	

The Deposit, Receipt and Sales Contract contain various other important provisions relating to the purchase of an apartment in the Project. It is incumbent upon Purchasers and prospective Purchasers to read with care the specimen Deposit, Receipt and Sales Contract on file with the Real Estate Commission.

## EXHIBIT "G"

### SUMMARY OF ESCROW AGREEMENT

The Escrow Agreement sets up an arrangement under which the deposits a Buyer makes pursuant to the Sales Contract will be held by a neutral party ("Escrow"). Under the Escrow Agreement, these things will or may happen:

1. Escrow will let the Buyer know when payments are due.
2. Escrow will arrange for the Buyer to sign all necessary documents.

3. The Buyer will be entitled to a refund of his or her funds only under certain circumstances as set forth in the Sales Contract. Those circumstances include the following:

- a. If the Seller is not able to provide the Buyer with clear title at the time of closing;
- b. The Buyer has a right to cancel the Deposit, Receipt and Sales Contract before the apartment has been transferred to him or at any time within thirty (30) days after delivery of the Public Report, whichever is earlier and to have all money paid into escrow refunded less any escrow cancellation fees and other costs, up to \$250, by giving notice to the Seller as provided by HRS § 514-62 (d), as amended.

- c. If (a) the Buyer has undertaken and performed the Mortgage Loan Acts but his application or eligibility for a loan is rejected or not given unqualified approval within sixty (60) days after application, or (b) the Buyer proposes to pay the Total Purchase Price in cash and has undertaken and performed the Cash Payment Acts, and if the Seller, in its sole discretion, after reviewing the written evidence submitted to it by the Buyer, determines that the Seller is not satisfied as to the Buyer's ability to make such cash payments, then in either of the foregoing events, the Seller may elect to cancel this Contract upon written notice to the Buyer and, upon such cancellation, the Seller shall direct Escrow to refund to the Buyer all sums paid hereunder by the Buyer, less any costs incurred by the Seller, Escrow or any lending institution in processing this Contract or the loan application. In the event, however, that the Seller ascertains that the Buyer has failed to perform the Mortgage Loan Acts, or in the event that the Seller determines in its sole discretion that the Buyer has failed to perform the Cash Payment Acts, whichever is appropriate, then the Buyer shall be in default hereunder, entitling the Seller to cancel this Contract and retain all sums paid hereunder (up to a maximum of twenty percent [20%] of the Total Purchase Price) as liquidated damages.

4. The Escrow Agreement also establishes the procedures for the retention and/or disbursement of a Buyer's funds, and says what will happen to the funds upon a default under the Sales Contract.

- a. Retention of Buyer's funds. The Escrow will retain the Buyer's funds until the escrow is ready to close. When the Escrow is ready to close, the Escrow will disburse the Buyer's funds according to the terms of the Sales Contract.

- b. Disbursement of Buyer's funds. If for some reason the escrow cannot close, either because of the fault of the Seller or the Buyer, then the Escrow will disburse the Buyer's funds, less escrow costs and fees of up to \$250.00, as follows:

- (a) To the Buyer if the Buyer is entitled to a refund;
- (b) To the Seller if the Buyer is in default (see below); or
- (c) In accordance with any subsequent agreement signed by both the Seller and the Buyer.

c. Default. If the Buyer does not do all that the Buyer has promised to do in the Sales Agreement, and if the Seller does all that the Seller has agreed to do, then the Buyer may be in default. If the Buyer is in default then the Seller is entitled to cancel the Sales Contract and to have the Escrow pay to the Seller all sums paid into Escrow up to twenty percent (20%) of the purchase price as liquidated damages. If the Buyer has paid more than twenty percent (20%) of the purchase price into escrow, then the Buyer may be refunded the excess less the Escrow cancellation fee of up to \$250.

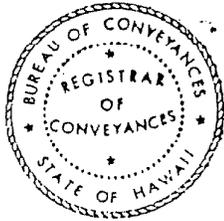
5. Indemnification of Escrow. In the Sales Contract the Seller and the Buyer agree that they will be jointly and severally liable to Escrow for all losses, costs, damages or money owed, including reasonable attorneys' fees, that Escrow must pay as a result of this Sales Contract. If Escrow has the right to collect these amounts from any other person, then that right shall belong to the Seller after the Seller pays Escrow. However, neither the Seller nor the Buyer has to pay to Escrow any losses, costs, damages, money owned or attorneys' fees if Escrow has done something wrong or doesn't do something it is supposed to do and that act or failure to act is not reasonable or responsible.

The Escrow Agreement contains various other important provisions and establishes certain charges with which a Buyer should be familiar, It is incumbent upon Buyers and prospective Buyers to read with care the executed Escrow Agreement on file with the Real Estate Commission.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
BUREAU OF CONVEYANCES  
P. O. BOX 2867  
HONOLULU, HAWAII 96803

Date DEC 20 1991

I hereby certify that the attached instrument is a true copy from the records of the Bureau of Conveyances of the State of Hawaii.



CONV 103  
APR 1977

Attest: *Heri Kuyalawa*  
for REGISTRAR OF CONVEYANCES *cd*

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

UBO 12852 to 372

73 APR 25 10: 21

RECORDATION REQUESTED BY:

78- 38971

AFTER RECORDATION, RETURN TO:

*Abe & Abe  
524 4924*

RETURN BY: MAIL ( ) PICKUP (✓)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, PACIFIC BASIN RESORTS, INC., a Hawaii corporation, with its principal place of business at Honolulu, Hawaii and mailing address being Suite 2620, Pacific Trade Center, 190 S. King Street, Honolulu, City and County of Honolulu, State of Hawaii, TAIYO FUDOSAN KOGYO COMPANY, LTD., a Japan corporation qualified to do business in the State of Hawaii, with its principal place of business being 1-5-30 Nanko, Nishi-ku, Yokohama, Japan, LOWELL C. E. ING, husband of Patricia Ing, whose residence address is Honolulu, Hawaii and whose mailing address is 1522 Alewa Heights Drive, Honolulu, City and County of Honolulu, State of Hawaii and WOW, INC., a Hawaii corporation, with its principal place of business at Kailua-Kona, Hawaii and post office address being P. O. Box 967, Kailua-Kona, County and State of Hawaii, hereinafter called the "OWNERS," are the owners of those certain parcels of land situated in the North Kona District, County and State of Hawaii, described as follows:

Lots numbered one (1) through fifty-six (56), KONA ACRES SUBDIVISION, UNIT IA, as shown on File Plan No. 1347, Lots numbered one (1) through seventy (70), KONA ACRES SUBDIVISION, UNIT IIA, as shown on File Plan No. 1348, Lots numbered one (1) through thirty-four (34), KONA ACRES SUBDIVISION, UNIT IB, as shown on File Plan 1550 and Lots numbered one (1) through forty-one (41), KONA ACRES SUBDIVISION, UNIT IIB, as shown on File Plan No. 1551.

WHEREAS, Owners desire to establish covenants, conditions and restrictions relative to the use of said land in order to create a proper subdivision.

NOW, THEREFORE, the Owners hereby declare that each of said lots shall be subject to the following covenants, conditions and restrictions:

A. The premises shall be used for single-family residence purposes only, and any house built thereon shall contain a minimum of 950 square feet of enclosed living area and shall be built in accordance with plans and specifications approved in writing by Seller;

B. All buildings or other structures erected or maintained on the property must be constructed of new materials;

C. No sheet metal roofs will be permitted, except coated metal tiles such as Decromastic roof tile or its equivalent;

D. No structure built on the property shall extend in excess of 24 feet above grade;

E. All of the foregoing covenants shall run with the land and shall be binding on all parties claiming under the Grantee through December 31, 1999. Grantor, its successors and assigns, may, and do hereby reserve the right to amend, modify or cancel with the approval of a majority of the lot owners in the subdivision, any of the covenants set forth above. In the event of breach of any of the foregoing covenants, Grantor, its successors and assigns, may bring an action for damages, a suit for injunction (mandatory or restraining) or may pursue any other available

relief alternatively or cumulatively, and judgment shall include all reasonable expenses and attorney's fees incurred as a result thereof.

The foregoing restrictions shall operate as covenants running with the land and the breach of any such covenants or the conditions or the continuance of any such breach may be enjoined, abated or remedied by said Declarants, or their successors in interest, or by any such owner or owners but by no other person. The term "owner" shall include the bona fide owner or holder of any agreement of sale executed by the Declarants herein for any of said lots. Provided, however, that any violation or re-entry shall not forfeit or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said premises or any part thereof. Each and all of said restrictions shall be binding upon and enforceable and effective against any owner of said realty whose title thereto is acquired through foreclosure or trustee's sale, as well as the successors in interest of any such owner. Easements for electricity and telephone are of record.

Enforcement. Jurisdiction may be taken in equity at suit of the Grantor or Grantors, or his or their heirs, executors, administrators, successors or assigns, or of any other grantee of any of said numbered lots, to restrict or prevent by injunction, mandatory or restraining, any violation of any of said covenants upon the part of the Grantee to be observed and performed, without prejudice to the right of the Grantor or Grantors, or his or their heirs, executors, administrators, successors and assigns, or any other grantee,

to adopt or pursue any other remedy thereafter for the same breach or failure, or for any subsequent breach or failure, or to take any action to recover damages for any such breach or failure.

Severalty. Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Owners have executed these presents as of this 31st day of March, 1978.

PACIFIC BASIN RESORTS, INC.

By Alan K. Haida  
ALAN K. HAIDA  
Its President

TAIYO FUDOSAN KOGYO COMPANY, LTD.  
By PACIFIC BASIN RESORTS, INC.

By Alan K. Haida  
ALAN K. HAIDA  
President  
Its Attorney-in-Fact

Lowell C. E. Ing  
LOWELL C. E. ING

WOW, INC.

By Nam HoLozin  
NAM HOLOZIN  
Its President Nam HoLozin

STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this 3rd day of April, 1978,  
before me appeared ALAN K. HAIDA, to me personally known,  
who being by me duly sworn, did say that he is the President  
of PACIFIC BASIN RESORTS, INC., a Hawaii corporation, and  
that the seal affixed to the foregoing instrument is the  
corporate seal of said corporation and that said instrument  
was signed and sealed in behalf of the corporation by authority  
of its Board of Directors, and said Officer acknowledged the  
instrument to be the free act and deed of the corporation.

Helaine Navarro  
Notary Public, First Judicial  
Circuit, State of Hawaii

My commission expires: 11-11-78

STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this 3rd day of April, 1978,  
before me personally appeared ALAN K. HAIDA, to me personally  
known, who, being by me duly sworn did say that he is the  
President of PACIFIC BASIN RESORTS, INC., a Hawaii corporation,  
and that PACIFIC BASIN RESORTS, INC. is the attorney-in-fact  
of TAIYO FUDOSAN KOGYO COMPANY, LTD., a Japan corporation,  
duly appointed under power of attorney dated the 29th day of  
December, 1975, recorded in the Bureau of Conveyances of the  
State of Hawaii in Book 11189, at Page 38; that the foregoing  
instrument was executed in the name and behalf of TAIYO  
FUDOSAN KOGYO COMPANY, LTD. by PACIFIC BASIN RESORTS, INC.  
as its attorney-in-fact; that the seal affixed to the foregoing  
instrument is the corporate seal of PACIFIC BASIN RESORTS,  
INC., and the instrument was so executed by PACIFIC BASIN  
RESORTS, INC. by authority of its board of directors; and  
ALAN K. HAIDA acknowledged the instrument to be the free act  
and deed of TAIYO FUDOSAN KOGYO COMPANY, LTD.

Helaine Navarro  
Notary Public, First Judicial  
Circuit, State of Hawaii

My commission expires: 11-11-78

STATE OF HAWAII )  
 ) SS  
CITY AND COUNTY OF HONOLULU )

On this 25th day of April, 1978,  
before me personally appeared LOWELL C. E. ING, to me known  
to be the person described in and who executed the foregoing  
instrument and acknowledged that he executed the same as his  
free act and deed.

Helaine Navard  
Notary Public, First Judicial  
Circuit, State of Hawaii

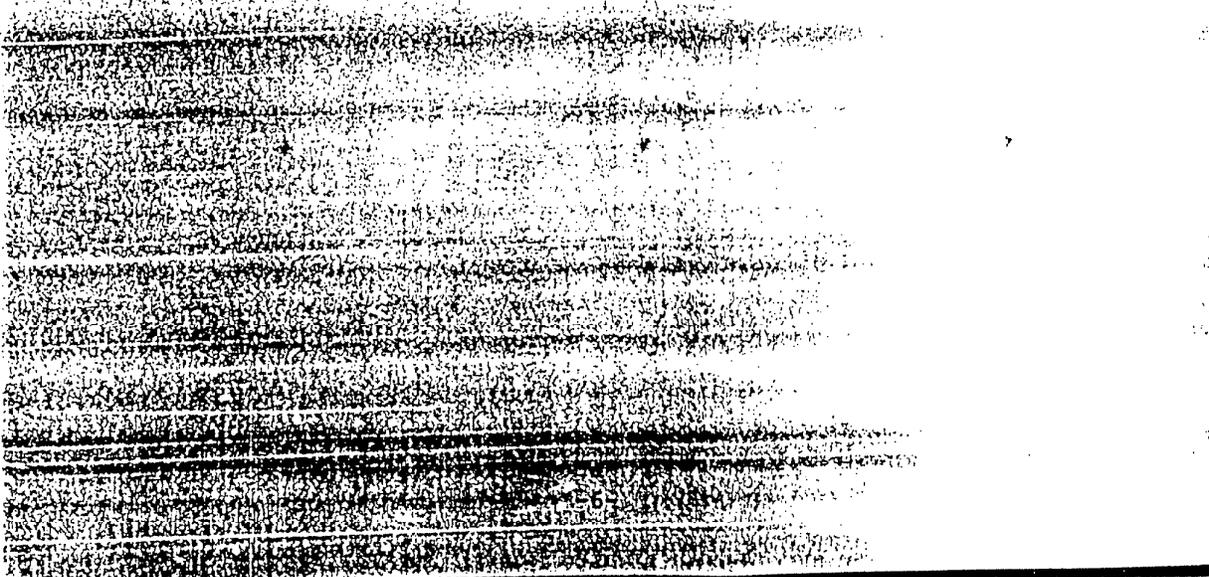
My commission expires: 11-11-78

STATE OF HAWAII )  
 ) SS  
*mlnp* CITY & COUNTY OF HAWAII )

On this 31st day of March, 1978,  
before me appeared NAT WOLOZIN, to me personally known, who  
being by me duly sworn, did say that he is the President *Secretary*  
of WOW, INC., a Hawaii corporation, and that the seal affixed  
to the foregoing instrument is the corporate seal of said  
corporation and that said instrument was signed and sealed  
in behalf of the corporation by authority of its Board of  
Directors, and said Officer acknowledged the instrument to  
be the free act and deed of the corporation.

Helaine Navard  
Notary Public, ~~Third~~ *First* Judicial *mlnp*  
Circuit, State of Hawaii

My commission expires: 11-11-78



LARRY S. TANIMOTO  
Mayor

Duane Kanuha  
Director

William L. Moore  
Deputy Director



## Planning Department

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

September 21, 1990

Mr. Edward R. Fischer  
P.O. Box 2637  
Kailua-Kona, HI 96745

Dear Mr. Fischer:

Recorded Agreement  
TMK: 7-3-46:18, Lot 3

Enclosed is your copy of the recorded Agreement to construct a bedroom/bathroom and a bedroom/studio/bathroom having a laundry tray addition to an existing one story single family dwelling having a separate exterior entrance.

This document was recorded by the Bureau of Conveyances on September 18, 1990 as Document No. 90-144145.

Sincerely,

A handwritten signature in cursive script that reads "William L. Moore".

DUANE KANUHA  
Planning Director

MO:etn

Enc.

EXHIBIT I

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII

SEP 28 1998 CONVEYANCES

DATE 9/18/98 TIME 930

DOCUMENT NO. 90 144145

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (  ) PICK-UP ( )

PLANNING DEPARTMENT  
COUNTY OF HAWAII  
25 AUPUNI STREET, ROOM 109  
HILO, HI 96720

TITLE OF DOCUMENT:

AGREEMENT

PARTIES TO DOCUMENT:

Edward R. Fischer

PROPERTY DESCRIPTION:

TMK: 7-3-46: 18, Lot 3  
Kona Acres Subdivision  
North Kona, Hawaii

LIBER/PAGE: ---

DOCUMENT NO.:  
TRANSFER CERTIFICATE OF  
TITLE NO(S):

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, HI 96720

RETURN BY: Mail (X) Pickup ( )

A G R E E M E N T

WHEREAS, Edward R. Fischer

hereinafter called "Owner," whose residence address is \_\_\_\_\_  
P.O. Box 2637 Kailua-Kona, HI 96745, desires to enter into  
an agreement with the PLANNING DEPARTMENT of the County of Hawaii,  
hereinafter called "County";

WHEREAS, the said Owner is constructing a bedroom/bathroom and  
a bedroom/studio/bathroom having a laundry tray addition to an existing  
one story single family dwelling having a separate exterior entrance.  
for his own convenience and in consideration for the permission  
received by the County to construct and install said \_\_\_\_\_  
improvements, Owner

assures the County that the said improvements will be used for  
single family dwelling use unless otherwise permitted by the  
County and makes the said agreement of record; and

WHEREAS, the subject area is zoned A-la by the  
County of Hawaii and classified Agriculture by the State  
Land Use Commission;

NOW, THEREFORE, in consideration of the foregoing, owner does hereby impose on the property described hereinafter, the following restriction:

1. Unless the applicable zone for the property shall be changed or the Planning Department of the County of Hawaii, or its successor body shall consent, the improvements located thereon shall be used only as a single family dwelling and no part thereof shall be rented out as a separate unit. This agreement shall run with the land, and shall be included or mentioned in any future conveyance of the property; and

2. That the owner shall grant to the Planning Department a reasonable right of entry to periodically inspect the premises to assure compliance with provisions of this agreement; provided, however, that the Planning Department shall give the owner reasonable notice prior to entering upon the premises for inspection purposes; and

3. That this agreement shall run with the land and apply to all persons who may or in the future use or occupy the dwelling above described; and

4. That all of the provisions of these conditions shall be recorded with the State of Hawaii Bureau of Conveyances; and

5. Failure of Owner to abide by this agreement shall result in the immediate removal of the said improvements

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by the Owner at Owner's expense upon demand by County.

Upon Owner's failure to remove said improvements

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within one month after demand is made by the County, the parties agree that this agreement will be a nullity and the County may treat said improvements

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as a violation of the ordinances then in existence. The parties further agree that the enforcement provision of this agreement shall be binding on all heirs, devisees and assigns.

The property upon which the restriction is imposed is described as follows:

TMK: 7-3-46: 18, Lot 3  
Kona Acres Subdivision  
North Kona, Hawaii

IT IS HEREBY FURTHER AGREED that if this agreement is with a Lessee, the legal owner shall be a party to this agreement.

IN CONSIDERATION OF THE AFORESAID, the Planning Department, County of Hawaii, hereby approves this agreement as being in conformity with the pertinent provisions of the Zoning Code, Chapter 25.

